

COMMENTS ON THE GREEN PAPER
PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD: GROWTH, CREATION
AND VALUES

ANSWER OF THE ENJEUX E-MÉDIAS ASSOCIATION

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The Enjeux-E-médias association is devoted to media, information literacy and media quality, particularly in regard to young people (<http://www.enjeuxemedias.org/>).

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This answer will focus on the questions involving regulation and fundamental values.

General remarks on the goals and methods proposed in the Green paper

The purpose of the green paper is to put the entirety of audiovisual regulation up for discussion, for all devices on which audiovisual media services are available. To that end, it puts forth goals and methods.

These goals and methods are not new, they can be found in the 2007 AVMSD directive and in the various texts pertaining to medias, particularly the 2006 Recommendation on the protection of minors and human dignity².

The proposed goals are mainly of two kinds :

¹ <http://www2.univ-paris8.fr/cemti/spip.php?article117> ; <mailto:sophie.jehel@univ-paris8.fr>.

² Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry.

- economic goals : since the Lisbon strategy, the European Union sees the ICT as a potential source of economic growth. The green paper explores the economic potential inherent to the development of media services and of European contents ;
- political and ethical goals, related to the preservation of a liberal and democratic system, and thus to the use of public liberties : pluralism, freedom of speech, protection of minors, care of disabled persons, among others.

All these goals are important. However, the dominance of the economic goals is clearly apparent from the outline of the paper, and is hinted at several times. Yet putting the democratic and ethical goals last jeopardizes their pursuit. The joint pursuits of those two kinds of objectives are by no means obviously balanced, and their conciliation cannot be expected to happen on its own.

The proposed methods of regulation are also of two kinds :

- encouraging competition and the suppression of national barriers, especially legal barriers, which is expected to create an homogeneous market, easier to conquer for European private companies ;
- the primacy of self-regulation as a flexible means of regulation of medias as corporations.

These methods can turn out to be contradictory. Self-regulation leads to ad hoc measures, depending on the sector and the market share of companies, and does not necessarily elevate the overall market requirements in terms of quality. While it may seem economical as far as public funding is concerned, self-regulation can also lead to territorial distortions and inequality increases.

The concept of self-regulation is also to be applied to the audience itself. For a vulnerable audience (children and teens), this implies an overexposure to known risks which cannot be tolerated.

The answer we propose will stress the necessity of co-regulation ; of control of the various aspects of regulation by the public authorities ; and of the publication of the various reports, in national languages and on official national websites as well as on EU websites³.

In order to truly consider what answers to give to the green paper, one must first question the priority given to economic issues over social and democratic issues, as well as the efficiency and the coherence of regulation when it is reduced to self-regulation alone.

³ Bearing in mind the two reports on the « Evaluation of the implementation of the networking principles for the EU ».

Audiovisual production financing (questions 4 and 5)

Because of the audiovisual convergence, supporting European audiovisual production and maintaining quality audiovisual media services requires that the production and recovery obligations of general interest service (as public services) be extended to Internet operators that propose audiovisual services, in particular to download platforms.

Impact on audiovisual convergence regulation (questions 10 to 19)

Main changes since 1997

Our answer will take the situation in France as a point of reference.

- The development of Internet access : web access has become a basic fact for the whole population (80 % of the French are Internet users).
- The amount of connections between devices : 32 % of the population use a smartphone to watch television or listen to the radio (from a 2012 Médiamétrie study) ; smartphone users surf more on the Net (79 %) (2012 CREDOC study). 64 % of French Internet users can use their television to connect to the web (2012 CSA/NPA council study).
- The development of social networks : 52 % of young people between 11 and 17 log in every day on Facebook (IFOP survey 2013).
- The download and social networking platforms belong mainly to North American corporations. Youtube alone accounts for 50 % of all downloads in France.

As emphasized in the green paper, the development of the Internet does not curb the appeal of television. Its use remains very high (3hrs 27 min per day, i.e. more than the time spent both on computers and on the Net : 2hrs 16 min – INSEE- France, 2013).

In terms of reception, the worlds of the Internet, television, connected television (via smartphone or not), and audiovisual media services available on all kinds of devices are growing ever closer.

The consequence that can be drawn from this development of the web and the convergence of various devices, in coherence with the democratic goals of this text, is that the specificities of the legal regimes of the different audiovisual media services (on-demand or not, as detailed in the AVMSD) on and off the web are no longer justified as far as fundamental rights are concerned. That applies in particular to ethics; but it is also true for protection of minors, fight against incitement to racial hatred and regulation of advertising contents. If 80 % of the population surf the Internet, it is time for normalized regulation to be applied to it, as it is applied on offline services, accordingly to the nature of the service.

The merging of audiovisual media services on demand (« non - linear », as in the AVMSD) and the web, the competition between both kinds of services, make the difference in legal regimes between them highly artificial, particularly between audiovisual media services on demand and download platforms, especially for professional contents.

New users digital rights : the current deregulation of download platforms has no justification where citizens are concerned.

The convergence has shed an even brighter light than before on conflicts of norms and values between the European Union and the United States of America, but also between Europeans, on matters such as privacy, fighting against incitement to racial hatred, and protection of minors.

It raises the question of public control of practices, both those of Europeans users and those of Internet stakeholders regardless of their nationality, as long as they target an European audience.

In the green paper (as in the current AVMSD directive), user control of on-demand audiovisual media services is considered to be greater, which would justify weakened regulations on those services compared to those on other audiovisual services : « (...) based on the much higher degree of consumer control in on-demand services, justifying less stringent regulation in certain areas.» (Green Paper 3.1, p. 11). The regime for download platforms, which are not quite considered to be of the same nature as on-demand services, is even less stringent, even though some claim to practice «broadcasting».

Experience shows that this assumption is far from true. The freedom of using a remote control is at least as significant as that of closing an internet window like a pop-up. From a citizen's point of view, it is hard to understand the difference of legal regime where fundamental rights are concerned (privacy, fight against incitement to racial hatred, protection of minors). It is even harder to understand why the nature of the user's control could justify it.

What has also changed since 1997 is that along with convergence and web development, a better understanding of users habits and practices has been achieved. As the European Commission remarks in its communication « European strategy for a better Internet for children» (May 2012), the competence level of young users remains low :

« Very young children in particular do not know how to change their privacy settings and do not understand the potential consequences of their actions » (p. 11).

They suffer from a « serious digital skills deficit » (p. 6) and from a lack of critical thinking towards advertising messages.

The Commission worries that « online safety as a specific topic (...) is insufficiently implemented with a lack of relevant online teaching resources » (p. 8), and states that « 80 % of parents believe that the improved availability and performance of parental control tools would contribute to safer and more effective use of the Internet by their children » (p. 13), but that « most tools are only effective in English. » (p. 4).

EU Kids Online has also noticed that children (40 % of them) are exposed to numerous risks online, in particular to adult contents, which can disturb them for a long time (24 % of children between 9 and 16 in France).

As an example, data from the European Audiovisual Observatory show that half of online video consumption in the UK comes from pornographic websites, across all ages⁴.

Therefore, weakening regulations on on-demand audiovisual media services (available via computer) and on download platforms based on the control capabilities and choices of users hardly seems to make sense, especially considering the implications on fundamental rights (privacy, fight against incitement to racial hatred, minors protection) an advertising regulation (explicit split between advertising and programs; privacy; personal data).

The difficulties inherent in parental control and protection of minors must rather lead to more regulation on medias and more media education.

A media education oriented towards critical information, independently from media and Internet operators must be reinforced both at the national and European level, but it will not replace public regulation.

Role of public service operators.

The very large presence of European youth on North American social networks and on download platforms raises problems in terms of private data protection, incitement to hatred, but also of use of children's data for goals of viral marketing.

These services create places for the young to express themselves ; they ensure the realization of an important part of youth rights, the right to express one's self. But the conditions in which this right is achieved are incompatible with other fundamental rights of E.U.

The private sector's failure to propose alternative platforms (especially for social networks) should incite the public authorities to encourage audiovisual public services to meet this need, according to the principles of public service (little or no advertising, no digital tracking). Children must not be left to themselves in an entirely commercial world.

It is important for their development, because they need adapted and educative environment (these platforms are aimed for more than 13 years old), and because these platforms fail to convey the European values that are part of European citizenship.

The green paper should also be a reminder of the democratic role of audiovisual public service, as a part of the European cultural exception.

⁴ Figures computed in 2010, considering the 25 most popular websites.

Since at least 1945, European countries have developed audiovisual public services to address such issues. Extending this approach to the Internet can hardly be done on a national scale; it calls for coordination and incentives on the European level.

Freedom of speech and media pluralism

Freedom of the press and media pluralism are fundamental principles of the European citizenship and of participative democracy, as stated in article 11 of the Charter of Fundamental Rights. In its January 2013 report (“A free and pluralistic media to sustain democracy”), the High Level Group on Media Freedom and Pluralism put forth some very constructive propositions. They could help consolidate democracy, media pluralism, and information quality by reinforcing the deontology of press bodies through press councils. These concern both written press and online or audiovisual information services.

The access to audiovisual public services on all the media services platforms in the framework of universal service remains however an essential part of media pluralism; it must be maintained and extended to all connected television systems.

Questions 20 to 25 Protection of minors

Contents ratings relative to age and risks run by minors.

One of the public requests is similar to one of the Commission's propositions from several years ago: that of labelling contents on the web (European recommendation on the protection of minors and human dignity in 1998, reiterated in 2006, and again in 2012 in its communication Digital Agenda : New strategy for a safer Internet and better Internet content for children and teenagers).

In 2007, Sophie Jehel conducted a study on more than 1000 preteens between 10 and 12 and more than 800 parents, on the use of contents ratings in television programs (French symbols 10, 12, 16, 18) and video games (PEGI) ⁵.

The overwhelming majority of French parents (more than 90 %) value these ratings, both for television programs and video games. The ratings provide beacons in a world that they are not always familiar with. Preteens also find them very useful (particularly when they protect the youngest children). The fact that parents heed them decreases children's exposure to violent contents.

For on-demand audiovisual media services, as long as we deal with services broadcast under the responsibility of television channels, ratings are used in France, under the supervision of the CSA. But for other services (download), there is no content ratings (or not visible either consistent). Yet, although ratings alone are not enough to ensure minors protection, they are nonetheless indispensable – and requested by parents.

⁵ Sophie Jehel *Parents ou médias, qui éduque les préadolescents ? Enquête sur leurs pratiques TV, jeux vidéo, Internet, radio*, Toulouse, Erès, 2011.

It is therefore time to make contents ratings compulsory, with simple, clearly-explained criteria, so as to be truly useful for parents and adults who are responsible for children, as it is the case for videogames with PEGI.

As for pornography and very violent contents, which are available on download platforms, they should be locked and submitted to an obligatory ID control, as it is the case for content broadcast on television in France and other countries.

On-demand audiovisual media services should respect broadcasting schedules, which have proved efficient, as other audiovisual media services do.

Private data protection.

Commercial practices on the Internet as well as on Connected TV are widely aimed at the storing of personal data. It is hard to understand why audiovisual regulation does not mention it.

Of all the Internet-related issues, the problem of personal data and geolocalization, which can be achieved from cell phones, is the one about which the most French are concerned (86 %, Credoc survey , 2012), and figures are even higher among young, educated, and privileged people.

The right to oblivion, particularly for the young, must be advanced on all platforms.

Public regulation and co-regulation: need for public regulation and role of civil society

Media regulation must ultimately be a public regulation supervised by independent administrative bodies.

Considering the magnitude of the task, especially concerning ratings, the choice could be made to implement a first self-regulatory step, followed by a subsequent control by an independent administrative body. Such a choice was made in France for television programs. It is however crucial that associations representing public interest, such as family, consumers and educational organizations be involved.

Discussions must be public, rules of conduct must be clear, and the public must be made aware of the possibilities of complaints, which should be addressed publicly. Co-regulation, involving companies, public authorities and civil society stakeholders from the fields of youth and childhood is necessary.

The issue of rights, particularly where children are concerned, with regard to the Convention on the Rights of the Child, must be addressed. The progressive stages of children development must be taken into account (no awareness of the intent of an advertising message before 7 years old, for example) to properly ensure the respect of children.

The issue of profiling, of personal data usage, of access to these data, and of their erasing is central, especially for the most fragile part of the public. It must in particular lead to a

strengthening of all devices that allow the sensitive public and the accompanying adults to escape the data storing used for targeted advertisement.

Filter systems control

Efficient filter systems must be made available in all European languages, which would justify a public intervention on the national or European scale. The reliability of these tools will require public oversight.

Questions 26 and 27

Accessibility for persons with disabilities

It is necessary to consider accessibility for disabled persons as a fundamental right and not as an obstacle to commercial competition, and to promote it accordingly.

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